

(d) Testimony shall be given under oath or affirmation and shall be recorded verbatim.

(e) The official presiding at the taking of the deposition shall note but not rule upon objections, and shall not comment on the admissibility of evidence or on the credibility and demeanor of the witness.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

### § 3.36 Record of proceeding.

The Immigration Court shall create and control the Record of Proceeding.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

### § 3.37 Decisions.

(a) A decision of the Immigration Judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the Immigration Judge in the presence of the parties and a memorandum summarizing the oral decision shall be served on the parties. If the decision is in writing, it shall be served on the parties by first class mail to the most recent address contained in the Record of Proceeding or by personal service.

(b) A written copy of the decision will not be sent to an alien who has failed to provide a written record of an address.

[57 FR 11573, Apr. 6, 1992, as amended at 59 FR 1900, Jan. 13, 1994]

### § 3.38 Appeals.

(a) Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by 8 CFR 3.1(b).

(b) The Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR-26) shall be filed directly with the Board of Immigration Appeals within 30 calendar days after the stating of an Immigration Judge's oral decision or the mailing of an Immigration Judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR-26) may

not be filed by any party who has waived appeal.

(c) The date of filing of the Notice of Appeal (Form EOIR-26) shall be the date the Notice is received by the Board.

(d) A Notice of Appeal (Form EOIR-26) must be accompanied by the appropriate fee or by an Appeal Fee Waiver Request (Form EOIR-26A). If the fee is not paid or the Appeal Fee Waiver Request (Form EOIR-26A) is not filed within the specified time period indicated in paragraph(b) of this section, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

(e) Within five working days of any change of address, an alien must provide written notice of the change of address on Form EOIR-33 to the Board. Where a party is represented, the representative should also provide to the Board written notice of any change in the representative's business mailing address.

(f) Briefs may be filed by both parties pursuant to 8 CFR 3.3(c).

(g) In any proceeding before the Board wherein the respondent/applicant is represented, the attorney or representative shall file a notice of appearance on the appropriate form. Withdrawal or substitution of an attorney or representative may be permitted by the Board during proceedings only upon written motion submitted without fee.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 61 FR 18908, Apr. 29, 1996]

### § 3.39 Finality of decision.

Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first.

[52 FR 2936, Jan. 29, 1987. Redesignated and amended at 57 FR 11571, 11573, Apr. 6, 1992]